IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11890 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HIMMATSINH GOPALSINH SISODIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11890 of 2000

MR HR PRAJAPATI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP for respondents.

#. In the present petition, the order of detention dated

13th April, 2000 passed by the District Magistrate, Banaskantha, Palanpur which has been actually effected on 26th November, 2000 has been challenged by the petitioner under Article 226 of the Constitution of India. Initially the petitioner was detained in Surat Jail and thereafter transferred to Bhuj Jail and at present he has been transferred to Porbandar jail as Class-II detenu. The District Magistrate, Banaskantha at Palanpur detaining authority has passed the order of detention under Section 3[1] of the PASA Act. The grounds of detention has been communicated and supplied to the present petitioner by the detaining authority under Section 9[1] of the PASA Act and accordingly, in all three offence have been registered against the present petitioner i.e. on 16th September, 98, 17th September, 1998 and 13th January, 2000. The order of detention has been passed on 13th April, 2000 and at that time, the petitioner was in detention by order dated 19th July, 1999 and before the completion of that detention period, second order of detention dated 13th April, 2000 has been effected on date 26th November, 2000. The State Government has filed the reply but the detaining authority has not filed any reply.

#. Learned advocate Mr.H.R.Prajapati has raised various contentions to challenge the detention order but according to his submission, one contention is enough to vitiate the detention order. He submitted that after the registered offence dated 16th September, 1998 and 17th September, 1998 and thereafter more than one year was passed without any offence and on date 13th January, 200, one offence has been registered against the present petitioner and thereafter on 13th April, 2000, the order of detention has been passed and therefore, there is delay of more than three months in passing the detention from the date of last offence registered on date 13th January, 2000. Therefore, relied upon the decision of this Court reported in 1997 [1] GLH 381. The second contention which has been raised by the learned advocate Mr.H.R.Prajapati, certain documents which are required for effective representation, though asked by the present petitioner by way of representation dated 29th November, 2000 addressed to the detaining authority but that demanded documents have not been supplied by the detaining authority and therefore the order of detention is required to be set aside. He also submitted that the detaining authority has not filed any reply explaining the circumstances that as to why the documents though asked by the petitioner, has not been supplied to the petitioner.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the respondents has submitted that the State Government has filed reply and according to para-4 of the reply, the representation of the present petitioner has been immediately considered and rejected by the concerned authority but learned AGP Mr.Jani is not able to give any answer as to the delay in passing the detention order from the date of last registered offence i.e. 13th January, 2000 and he is not able to give any satisfactory answer in respect of documents which were though asked by the petitioner in his representation dated 29th November, 2000, which was not supplied to the petitioner. However, Mr.Jani, learned AGP has submitted that looking to the facts and circumstances as well as material on record, the order of detention has been rightly passed by the detaining authority which is legal and valid one and no interference of this Court is warranted.

#. I have considered the submissions of both the learned advocates. However, facts which are undisputed between the parties. It is also found from the record that last offence registered against the present petitioner on 13th January, 2000 and the order of detention has been passed on 13th April, 2000, but for the intervening period, there was no offence registered or unregistered alleged to have committed by the present petitioner. Therefore, no proximate or immediate nexus in passing the detention order against the present petitioner. So far the second contention is concerned, the documents which were asked by the petitioner in representation dated 29th November, 2000 has not been supplied to the petitioner and no reply has been given by the detaining authority explaining the circumstances. Therefore, considering the view taken by this Court in reported decision 1997 [1] GLH 381, para-21 which quoted as under :-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some

> substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

#. In view of the observations made by this Court and considering the fact that documents though asked for, were not supplied to the present petitioner and nor any reply has been filed by the detaining authority and therefore, according to my opinion, the order of detention deserves to be quashed and set aside.

#. In the result, the present petition is allowed. The order of detention dated 13th April, 2000 passed by the District Magistrate, Banaskantha at Palanpur which is actually effected on 26th November, 2000 is hereby quashed and set aside. The present petitioner detenu Himmatsingh Gopalsinh Sisodiya who has been detained in Porbandar Jail is ordered to be released immediately if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 3-7-2001 [H. K. Rathod, J.]

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